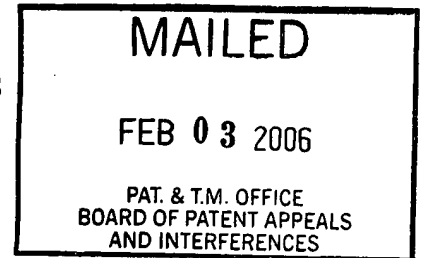


UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---



Ex parte STEPHEN ARKINSTALL, SERGE HALAZY, DENNIS CHURCH,  
MONTSERRAT CAMPS, THOMAS RUECKLE, JEAN PIERRE GOTTELAND  
and MARCO BIAMONTE

---

Application No. 10/088,090

---

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

---

This application was received at the Board of Patent Appeals and Interferences on January 10, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On December 2, 2005, appellants filed a reply brief in response to the Examiner's answer mailed October 3, 2005. However, there is no indication on the record whether or not the

Application No. 10/088,090

examiner has responded to the reply brief. Section § 1208.03 of the Manual of Patent Examining Procedure (8<sup>th</sup> ed., Aug. 2001) states:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer. . . . The primary must then either: (A) acknowledge receipt and entry of the reply brief by using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02 [emphasis added].

Furthermore, the appeal brief filed July 27, 2005, did not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed July 27, 2005:

1) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental appeal brief in compliance with 37 CFR § 41.37 is required. For more information on the Board's new rules see the web page entitled:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Application No. 10/088,090

Also, the Information Disclosure Statements dated April 4, 2003 and October 8, 2003, were not considered by the Primary Examiner with respect to compliance with the criteria set forth in 37 CFR §§ 1.97 and 1.98. A written communication notifying appellants of the Primary Examiner's decision is required.

Accordingly, it is

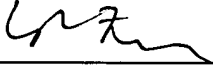
**ORDERED** that this application be returned to the examiner to: 1) hold the appeal brief of July 27, 2005 defective; 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37 or to submit a statement by the examiner presenting an assumed status regarding the appendix which is missing; 3) for proper response to the reply brief filed December 2, 2005; 4) for consideration of the Information Disclosure Statements; 5) written communication to appellants of such consideration; and 6) for such further action as may be appropriate.

Application No. 10/088,090

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: \_\_\_\_\_

  
Craig R. Feinberg  
Program and Resource Administrator  
(571) 272-9797

cc: OBLON, SPIVAK, MCCLELLAND, MAIER  
& NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

CRF/lbg